

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVE WATERBURY et al.,

Plaintiff,

v.

A1 SOLAR POWER INC. et al.,

Defendant.

Case No.: 15-CV-2374-MMA(WVG)

**NOTICE AND ORDER FOR EARLY
NEUTRAL EVALUATION
CONFERENCE**

IT IS HEREBY ORDERED that an Early Neutral Evaluation (“ENE”) of your case will be held on November 9, 2016, at 2:00 p.m., before United States Magistrate Judge William V. Gallo, United States Courthouse, Courtroom 2A, Second Floor, 221 West Broadway, San Diego, California.

The following are mandatory guidelines for the parties preparing for the ENE Conference.

1. **Purpose of Conference**

The purpose of the ENE is to permit an informal discussion between the attorneys, parties and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off the record, privileged and confidential. Counsel for non-English speaking parties is responsible for arranging for the appearance of an interpreter at the conference.

1 2. **Personal Appearance of Parties Required:**

2 All parties, adjusters for insured defendants, and other representatives of a party
 3 having full and complete authority to enter into a binding settlement, and the principal
 4 attorneys responsible for the litigation, must be present in person and legally and factually
 5 prepared to discuss settlement of the case. See S.D. Cal. Civ. L. R. 16.1(c).

6 3. **Full Settlement Authority Required**

7 In addition to counsel who will try the case, a party or party representative with full
 8 settlement authority¹ must be present for the conference. In the case of a corporate entity,
 9 an authorized representative of the corporation who is not retained outside counsel must be
 10 present and must have discretionary authority to commit the company to pay an amount up
 11 to the amount of the plaintiff's prayer (excluding punitive damage prayers). The purpose
 12 of this requirement is to have representatives present who can settle the case during the
 13 course of the conference without consulting a superior.

14 Unless there are extraordinary circumstances, persons required to attend the
 15 conference pursuant to this Order shall not be excused from personal attendance. Requests
 16 for excuse from attendance for extraordinary circumstances shall be made in writing at
 17 least one week before the conference. Failure to appear at the ENE conference will be
 18 grounds for sanctions.

19 4. **Settlement Proposal and Response Required**

20 No later than 15 days before the scheduled ENE Conference, Plaintiff(s) shall submit
 21 to Defendant(s) a written settlement proposal. No later than 10 days before the scheduled

23 1 "Full authority to settle" means that the individuals at the settlement conference must be authorized to
 24 fully explore settlement options and to agree at that time to any settlement terms acceptable to the
 25 parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person
 26 needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman
v. Brinker Intl., Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with
 27 unlimited settlement authority to attend the conference includes that the person's view of the case may
 be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not
 adequate. The person with full settlement authority must be able to negotiate a settlement without being
 restricted by any predetermined level of authority. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir.
 28 2001).

1 ENE Conference, Defendant(s) shall submit a response to Plaintiff(s)' settlement proposal.
2 All parties shall be prepared to address in their ENE Statements, and discuss at the ENE
3 conference, the settlement proposal and response.

4 **5. ENE Statements Required**

5 **The Court requires that the parties file ENE Statements, which may be**
6 **confidentially submitted within the party's discretion. No later than five court days**
7 **prior to the ENE**, the parties shall submit directly to the undersigned's chambers
8 statements of **five pages or less** which outline the nature of the case, the claims, the
9 defenses, and the parties' positions regarding settlement of, and attempts to settle the case.
10 **All briefs must comply with Judge Gallo's Chambers Rules.**

11 The parties shall meet and confer in good faith prior to the ENE Conference, and
12 verify that they have done so in their respective ENE Conference statements, outlining the
13 substance of their discussions and negotiations.

14 **6. Case Management Under the Amended Federal Rules**

15 In the event the case does not settle at the ENE Conference, the parties shall also be
16 prepared to discuss the following matters at the conclusion of the conference.

17 a. Any anticipated objections under Federal Rule of Civil Procedure
18 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil Procedure
19 26(a)(1)(A-D);

20 b. The scheduling of the Federal Rule of Civil Procedure 26(f) conference;
21 c. The date of initial disclosure and the date for lodging the discovery plan
22 following the Rule 26(f) conference; and,

23 d. The scheduling of a Case Management Conference pursuant to Federal
24 Rule of Civil Procedure 16(b).

25 The Court will issue an order following the ENE addressing these issues and setting
26 dates as appropriate.

27 **7. Time Allotted**

28 The Court generally allots two hours for ENEs. Counsel should be prepared to be

succinct and to the point. Requests for additional time must be made in writing in the party's ENE statement, accompanied by a short explanation.

8. New Parties Must Be Notified by Plaintiff's Counsel

Plaintiff's counsel shall give notice of the ENE Conference to all parties responding to the Complaint after the date of this Notice.

9. Requests to Continue an ENE Conference

Civil Local Rule 16.1(c) requires that an ENE take place within 45 days of the filing of the first answer. Requests to continue ENE conferences are rarely granted. Counsel seeking to reschedule an ENE must first confer with opposing counsel. The Court will consider formal, written ex parte requests to continue an ENE conference when extraordinary circumstances exist that make a continuance appropriate. In and of itself, having to travel a long distance to appear at the ENE conference is not an extraordinary circumstance. **Absent extraordinary circumstances, requests for continuances of the ENE conference may not be considered unless submitted in writing no less than seven calendar days prior to the scheduled conference.**

Please refer to the undersigned's Chambers Rules for additional guidance regarding the areas which must be addressed in the request.

The parties shall be prepared to engage in good faith settlement discussions with the Court and opposing parties during the ENE Conference. Failure to engage in good faith settlement discussions may result in the imposition of sanctions.

Questions regarding this case may be directed to the Magistrate Judge's Research Attorney at (619) 557-6384. Please consult the undersigned's Chambers Rules, available on the Court's website, before contacting chambers with any question(s).

IT IS SO ORDERED.

DATED: September 19, 2016

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Hon. William V. Gallo
United States Magistrate Judge